

REMARKS/ARGUMENTS

A Request for Continued Examination (RCE) is submitted herewith.

The present Amendment is in response to the Office Action mailed October 9, 2007. Claims 1-6, 9, 11-16, and 20-24 were rejected in the Action. Claim 1 has been amended herein to further clarify the present invention. Claims 25 and 26 have been added. Therefore, claims 1-6, 9, 11-16, and 20-26 are currently pending in the present application. Support for all claim amendments and new claims can be found in Applicants' originally specification in at least paragraphs [0047]-[0053]. As such, no new matter has been added. Applicants set forth remarks relating to the Office Action below.

Applicants would like to thank the Examiner for indicating allowable subject matter in the present application. In the Action, claims 4 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base and any intervening claims. In the present response, Applicants present arguments for the allowance of claims 1 and 9. Therefore, claim 4 and 23 remain dependent upon claims 1 and 9 respectively.

In the Action, the Examiner rejected claims 1-3, and 5 under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,261,129 to Aebi et al. ("Aebi") in view of U.S. Pat. No. 4,997,432 to Keller ("Keller"). The Examiner asserted that Aebi discloses an instrument 200 for distracting vertebrae with two elongated sections 212 with each having two prongs 214 with a passage between the sides of the arms that is capable of holding an artificial disc. Further, the Examiner asserted that while Aebi fails to disclose the interior side of the distal end of the elongated section having laterally spaced grooves, Keller

teaches that the ends of an instrument for an implant have grooves for accommodating the implant.

Applicants respectfully assert that amended independent claim 1 is not obvious over Aebi in view of Keller because the cited references neither teach nor suggest an instrument for distracting an intervertebral space, the instrument including a first elongated section and at least two prongs extending therefrom each having an interior side having at least two laterally-spaced grooves disposed thereon.

As required by amended claim 1, the elongate sections and the prongs each include grooves. Aebi does not disclose or suggest either an elongated section or prongs having an interior side including at least two laterally-spaced grooves thereon. The Examiner asserted that Keller teaches that the ends of an instrument for an implant have grooves. These grooves in actuality are located on prongs of the Keller instrument. However, Keller does not teach an elongate section and prongs having grooves thereon. Therefore, the Examiner has not met his initial burden of factually supporting a *prima facie* conclusion of obviousness for amended claim 1.

For the foregoing reasons, Applicants submit that claim 1 is not obvious over Aebi in view of Keller. Claims 2, 3, and 5 and new claim 25 are not obvious, *inter alia*, by virtue of their dependence from independent claim 1. A dependent claim is necessarily narrower than an independent claim from which it properly depends.

Further in the Action, the Examiner rejected claims 6 and 22 under 35 U.S.C. 103(a) as being unpatentable over Aebi in view of Keller in view of European Patent No. 1219266 to Nuemann ("Nuemann"). In response, Applicants assert that claims 6 and 22 are patentable over Mauldin, *inter alia*, by virtue of their dependence from claim 1, which is patentable for the reasons set

forth above.

Further in the Action, the Examiner rejected claims 1, 5, and 20 under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,159,215 to Urbahns ("*Urbahns*") in view of Aebi. The Examiner asserted that it would have been obvious to one of ordinary skill in the art to use prongs on the ends of the arms or elongate sections of the instrument of *Urbahns* per the teaching of Aebi such that it provides more versatility and allows for easier insertion when irregularities in the vertebra are encountered during insertion.

Applicants respectfully assert that amended claim 1 is unobvious over *Urbahns* in view of Aebi or Keller or a combination of both. The Examiner asserted that *Urbahns* discloses an interior side of an elongated section having interior grooves thereon. As stated above, amended claim 1 requires an instrument including a first elongated section and at least two prongs extending therefrom each having an interior side having at least two laterally-spaced grooves disposed thereon. Therefore, the Examiner would have to find some reason for one skilled in the art to first incorporate prongs having an interior surface on the end of the elongated section of *Urbahns* and then further modify *Urbahns* to have grooves disposed on the interior surfaces of those prongs to arrive at the present invention.

Applicants would like to point the Examiner to paragraph [0050] and paragraph [0053] of the specification of the present application which state:

[0050] "Now further referring to Fig. 9, as assembled, grooves 5118 of the respective ramps 5100 face one another. In this orientation, inserter/impactor 400 (having the disc 160 mounted thereto) is insertable between the opposing ramps 5100, with the teeth 188a of the implant base plates 168a-b slidably engaging grooves 5118." (emphasis

added).

[0053] "It should be noted the use of the prongs 5120 and the grooves 5118 thereon, in which teeth 188a, 188b slide, avoids any possible damage to the vertebral endplates as a result of engagement of the endplates by the teeth 188a, 188b prior to full insertion of the disc 160." (emphasis added).

In the present invention, teeth 188a, 188b of the base plates of the implant do not engage an endplate of a respective vertebral body until after the prongs are removed from an intervertebral space. This is because the grooves 5118 extend along the elongated section and the prongs. In contrast, there is no need for *Urbahns* to have such a structure as recited in amended claim 1. Trial 36 shown in Figs. 14 and 15 of *Urbahns* does not include teeth nor is the trial shown slidably engaging the elongated section. Therefore, one skilled in the art would not look to *Aebi* to provide prongs extending from the elongated section of *Urbahns*. Further, one skilled in the art would not look to *Aebi* to provide prongs extending from the elongated section of *Urbahns* and then to *Keller* to provide grooves on the prongs to arrive at the present invention.

For the foregoing reasons, Applicants submit that claim 1 is not obvious over *Urbahns* in view of *Aebi* or *Keller* or any combination of both *Aebi* and *Keller*. Claims 5 and 20 are not obvious, *inter alia*, by virtue of their dependence from independent claim 1.

Further, the Examiner rejected claim 21 under 35 U.S.C. § 103(a) as being unpatentable over *Urbahns* in view of *Aebi* in view of U.S. Pat. No. 6,159,215 to Baumgartner ("*Baumgartner*"). In response, Applicants assert that claim 21 is patentable over *Urbahns* in view of *Aebi* in view of *Baumgartner*, *inter alia*, by virtue of its dependence from claim

1, which is patentable for the reasons set forth above.

Further in the Action, the Examiner rejected claims 9, 11, 13-16, and 24 under 35 U.S.C. 103(a) as being unpatentable over *Urbahns* in view of *Baumgartner*. The Examiner previously asserted that *Urbahns* failed to disclose the distal ends of the elongate sections having two prongs. See pg.3, 11.17-18 of Action. In contrast, claim 9 recites that each of the ramps include at least two intervertebral space engagement members extending from a distal end of the ramp. Further *Baumgartner* does not cure this deficiency.

Applicants respectfully assert that claim 9 is not obvious over *Urbahns* in view of *Baumgartner* because the cited reference neither teach nor suggest an instrument for distracting an intervertebral space including a pair of identical ramps, ... "each of said ramps further comprising a concave interior side and at least two intervertebral space engagement members extending from a distal end of said ramp, said concave interior side comprising at least one longitudinally disposed guide that extends along said ramps and said intervertebral space engagement members."

For the foregoing reasons, Applicants submit that claim 9 is not obvious over *Urbahns* in view of *Baumgartner* or *Aebi* or *Keller* or any combination of these cited references. Claims 11, 13-16, 24 and new claim 26 are not obvious, *inter alia*, by virtue of their dependence from independent claim 1.

Further, the Examiner rejected claim 12 under 35 U.S.C. § 103(a) as begin unpatentable over *Urbahns* in view of *Baumgartner*. In response, Applicants assert that claim 12 is patentable over *Urbahns* in view of *Baumgartner*, *inter alia*, by virtue of its dependence from claim 9, which is patentable for the reasons set forth above.

In view of the above, each of the presently pending

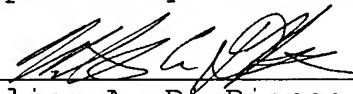
claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' agent at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: October 31, 2007

Respectfully submitted,

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